IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

vs.

SETH ALLEN AIKENS, II,
Defendant.

Criminal No.
2:22-cr-00119-WSH-1

- - -

Transcript of Evidentiary Hearing on May 2, 2025 United States District Court, Pittsburgh, Pennsylvania, before Judge W. Scott Hardy.

APPEARANCES:

For the Government: U.S. Attorney's Office
Gregory Melucci, Esquire
U.S. Courthouse
700 Grant Street
Pittsburgh, Pennsylvania 15219

For the Defendant: Frank Walker Law
Frank Walker, Esquire
3000 N. Lewis Run Road, Suite 1800
Clairton, Pennsylvania 15025

Court Reporter: Aimee P. Martin, RMR, CRR
700 Grant Street
Suite 6260
Pittsburgh, Pennsylvania 15219

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Friday, May 2, 2025

P-R-O-C-E-E-D-I-N-G-S

THE COURT: So this is the time and the place for an evidentiary hearing in the matter of United States of America versus Seth Allen Aikens, II Criminal No. 22-119.

Counsel, if you would identify yourselves for the record, please.

MR. MELUCCI: Good morning, Gregory Melucci for the United States.

MR. WALKER: Good morning, Your Honor, may it please the Court, Frank Walker for Mr. Aikens. Mr. Aikens is present at Counsel table.

THE COURT: Welcome and good morning to all of you.

So let me just lay out a little bit of background for you all and for the record and then from my perspective what I understand the issue to be. That might help guide you all in terms of how you direct your presentations to me.

So I'll note by background the Defendant is charged in a 30-count indictment with the following:

Seventeen counts of wire fraud in violation of 18 United States Code Section 1343 for conduct occurring on various dates between August 29, 2018, and March 21, 2020. Those are Counts 1 through 17;

Seven counts of mail fraud in violation of 18 United States Code Section 1341 for conduct occurring on various

dates between April 26, 2019, and August 15, 2019. Those relate to Counts 18 through 24;

And then six counts of money laundering in violation of Title 18 U.S. Code Section 1957(a) for conduct occurring on various dates between February 1st of 2019 to April 22nd of 2019, and those relate to Counts 25 through 30.

The Defendant's filed a number of pretrial motions. I will just identify those.

First set of motions relate to motion for the Government agents and local law enforcement officers to retain rough notes and writings, motion for disclosure of promises of leniency and/or existence of plea bargain agreements, motion for early disclosure of *Jencks* materials, motion to produce evidence that the Government intends to use under Federal Rules of Evidence 404(b) and 609, motion for disclosure of all prior testimony of unindicted coconspirators and/or confidential informants, and for disclosure of the identity and contact information for those folks, and then a motion for discovery. I note that the Court ruled on those particular motions in an order on April 14th at Document No. 71.

There's also been a motion for a bill of particulars. The Court ruled on that motion in a memorandum order also on April 14th. That appears at Document No. 72.

There's been a motion for a *Franks* hearing. The Court has not yet ruled on that motion, but that is not the

subject of today's hearing. That motion appears at Document No. 61.

And then finally, a motion to dismiss spoliation of evidence appearing at Document No. 63, and that is the motion that we are here to discuss today.

The Government's responded to the Defendant's motions. That omnibus response is at Document No. 67. The Defendant subsequently filed a reply to the Government's response appearing at Document No. 70, and the Government filed a surreply at Document No. 71.

With regard to the Defendant's motion for spoliation, Defendant alleges that the Government executed a search warrant to seize certain encrypted drives which contain his personal files, projects, client projects, attorney-client communications, and other personal and case-related data.

According to the Defendant, the drives contain exculpatory materials critical to his defense, but due to the Government's alleged -- I'm using quotes -- "forensic failures" during the seizure process, the Defendant contends that the materials were not properly preserved, and they have been rendered permanently inaccessible.

The Defendant further contends that the loss of these alleged exculpatory evidence raises spoliation concerns and implicates his right to due process and a fair trial. He maintains that dismissal of the indictment is warranted.

In response, Government explains that the electronic storage devices seized from the search of the Defendant's premises include laptop computers, cell phones, computer towers, and bulk sim or SD cards. I'll refer to those as ESD.

The items were properly seized, stored, and maintained in the possession of HSI forensic examiners for later forensic review. And those forensic examiners imaged and copied certain of the ESD, installed it onto an external hard drive, and delivered it to the Defendant. With respect to other seized ESD, forensic investigators encountered encrypted data that couldn't be unencrypted despite their sophisticated cracking tools.

The Government informed the Defense that certain encrypted devices cannot be examined by forensic investigators, but the devices could be examined by the Defendant since he had the decryption key code. If the Defendant wished to examine any of the encrypted devices, he would have to do so in a controlled environment at the HSI office so the investigators can properly image the devices and preserve the data.

By way of summary, the Government submits that it made the ESD available to the Defendant and imaged as much ESD as forensically available, but the Defendant did not accept the invitation to examine the encrypted ESD. The Government attached to its response a letter from HSI computer forensics

Special Agent David J. Coleman refuting the Defendant's contention that the encrypted data on the ESD is permanently inaccessible as a result of the forensic examination.

Due to the disputed nature of the matter, the Court scheduled today's hearing for the purpose of accepting evidence.

All that being said, let me just say as a threshold question and the thing I'm struggling to understand, you know, is the first element of analyzing the motion here is evidence has to be missing or destroyed, and it's not clear to me that, based upon the moving papers, that it has been if he hasn't even gone and met with the Government to use his passcode to open it up.

"Is this hearing actually premature?" is sort of what I'm wondering, and maybe it isn't. Maybe that's a factual dispute that we need to resolve today as well, but if it isn't a dispute, then maybe tell me that. And then we won't waste time or resources today, and this is an issue for another day. I'm not sure. You can tell me.

MR. WALKER: May I have a moment, Your Honor?

THE COURT: Sure.

(Defendant consults with Counsel.)

MR. WALKER: Thank you, Your Honor. Your Honor, after further review, we're prepared to proceed today and offer any evidence this Court may deem necessary to rule on

the motion, Your Honor.

THE COURT: Thank you.

MR. WALKER: Defense calls Seth Aikens.

THE COURT: Over here. Ms. Woffington is going to swear you in. Then you can take a seat.

THE LAW CLERK: Please raise your right hand.

(Administered oath.)

THE LAW CLERK: Thank you. Please have a seat.

SETH ALLEN AIKENS, II, a witness herein, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q. Sir, can you state your name for the record?

A. Seth Aikens.

Q. Spell your last name.

A. A-I-K-E-N-S.

Q. You are the Defendant in this matter?

A. Correct.

Q. I'm going to limit my questioning to the issue before the Court. Did you hear the Court explain what the issues -- what we're here for today?

A. Yes, sir.

Q. I want to draw your attention to the date in question when the officers came to search and retrieve evidence from your home. You remember that date?

A. The date, May 24th.
Q. Did the officers come into your house and seize items from a safe in your house?
A. In the office, yes.
Q. Can you explain what happened?
A. What they did, I was already gone from there.
Q. At some point in time, were you made aware that they came into your house and retrieved some items which may be used in this case?
A. The search warrant return log.
Q. You were made aware?
A. Yes, sorry.
Q. And at some point in time, did you review pictures of the items for which the agents reportedly attempted to take items from a safe in the office in your home?
A. Correct.
MR. WALKER: May I approach, Your Honor?
THE COURT: You may.
BY MR. WALKER:
Q. I'll show you what I have marked as Defense Exhibit A and B which I have shown Government Counsel. The Government will stipulate that these were the items or pictures of the -- what is that?
A. This is my safe in my office here.
Q. Those are pictures of the safe in your office?

A. Yes, sir.

MR. WALKER: Your Honor, I would move for their admission. I would note the Government has stipulated to the authenticity and the foundation for their admission.

MR. MELUCCI: I stipulate, Your Honor. They're photographs of the search.

THE COURT: Admitted.

Is that Exhibit A?

MR. WALKER: A and B. They're two separate pictures.

BY MR. WALKER:

Q. Let's look at Exhibit A.

A. That's the before?

Q. Yes.

A. Yup.

Q. Can you show me what is depicted in Defense Exhibit A?

A. Well, there's book documents in the middle here, but most notably there's two hard drives. And then in this top folder there's about 31 papers listing passwords and a USB drive.

Q. And I want you to refer to Exhibit B. What is Exhibit B?

A. This was their after photo. I can't remember the name of the guy who took it, but this is what he -- what they had left showing that that's gone, the binder, the plastic binder, and then the two hard drives and then all of the book documents.

Q. You kind of jumped ahead a little bit.

A. Sorry.

Q. What's the difference between A and B?
A. That they have the papers listing passwords. The USB, the book documents and the hard drives are gone, the trail camera.
Q. And when you say "they," who are you referring to?
A. Agent Gealey and Agent Coma [sic].
Q. And the devices that were taken that are differentiated between A and B, do you know what was contained on those devices?
A. Yeah. We submitted it to the Court.
Q. And in what format? What are you saying?
A. When we listed what we didn't have versus what we had.
Q. Now, you stated earlier that there was folders, a binder of passwords. You remember saying that?
A. There's papers listing passwords in this top --
Q. Why are the passwords relevant for today's hearing?
A. Because that's the only way to access the drives because they turned off the computer in the house.
Q. So did you ever receive a copy of those papers back in any discovery items?
A. Nope.
Q. Is it your contention that those passwords were linked or able to open the devices that were in that locker?
A. Absolutely.
Q. Why do you make that contention?
A. Because there's only one way to get into them, one way

out. There's one key.
Q. Are you familiar with a document called evidence recovery log?
A. Yep, the search warrant return.
Q. Why -- how are you familiar with that?
A. It had been disclosed later on that, "Hey, this is what they took."
Q. How is that relevant for your argument today?
A. Because it states that they left the house with the papers listing passwords, the book documents, and the drives.
Q. If I showed you a copy of that log, would you recognize it?
A. Yeah.
MR. WALKER: May I approach, Your Honor?
THE COURT: You may.
BY MR. WALKER:
Q. I'm going to show you what I will mark Defense Exhibit C. What is that, sir?
A. The search warrant return log.
Q. Can you turn to the page and identify the page that talks about the passwords that were taken from the safe in your office?
A. Yes, Page 2 of 4, ISO-0000634953, and it says "Book storage media and papers listing passwords, Room 0, Special Agent Coleman."

Q. And who authored that document?
A. I believe it was Martin Blow.
Q. Can you review the document, see if that's accurate?
A. At the top of Page 1 it says, "Preparer assistant and Inspector Blow."
MR. WALKER: Thank you, Your Honor. I have no further questions. Offer for cross.
MR. MELUCCI: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MELUCCI:
Q. Mr. Aikens, have you ever had a day in any formal forensic training of digital devices?
A. No.
Q. Have you ever forensically examined a mobile device or a computer device or a hard drive for data stored on that device?
A. Yeah. I'm similar with Cellebrite. I'm familiar with AXIOM. I'm familiar with MKey.
Q. My question is "Have you ever conducted a forensic examination of a device?"
A. Like you can load and play -- you know, like utilize them. Like I wasn't going out and completing them.
Q. What is your background in digital media, digital forensics?
A. I wouldn't have a specific background in it.

Q. Do you have any training in it?
A. I wouldn't say training, but I've created products such as the body cam app which, you know, contain the audit log, contain encryption, and things related.
Q. So you don't have any formal training in digital forensics or digital media, schooling that is?
A. I'm sorry?
Q. S-C-H --
A. Schooling, no, no.
Q. So everything you know about apps, digital media, mobile devices, other things you did, you claim you did for these clients was all self-taught stuff?
A. Correct.
Q. What's your high school -- what was your high school background? Where did you go to high school?
A. Horrible in high school, bad grades.
Q. Did you go to college at all?
A. No, sir.
Q. Do you have any postsecondary formal training in anything?
A. No, sir.
Q. You filed an original motion alleging spoliation, right?
A. Correct.
Q. In that motion, you make accusations that the Government has destroyed data during the attempted de-encryption of some devices which were seized during the search?

A. Correct.
Q. What evidence do you have to back that up?
A. The search warrant photos on the CDs. The computers were on in the house, all three of the computers.
Q. But beyond that, what specific knowledge do you have to present to Judge Hardy that you actually know that devices that were seized by the Government during the search have been damaged or ruined?
A. Permanently inaccessible.
Q. How do you know that?
A. There's no other way to access the drives.
Q. But you've never seen the drives.
A. Well, in order to see the drives and get into the drive, as we put in the motion, we need the exact key. They're all encrypted with AES-256.
Q. Did you ever ask Mr. Walker, your attorney, to have the Government provide the passwords that you contend are in a binder?
A. I would have thought they would have been returned in all the other stuff we got.
Q. That's not my question. Did you ever ask Mr. Walker, "Hey, Frank. I think the passwords for those devices are in a binder. Tell Melucci to give them to me"? Did you ever ask him to do that?
A. When I initially emailed him, I said that you guys have

the papers listing passwords and to notify you.
Q. Do you have that email that you can show the Court that suggests that a request was made to look at passwords that the Government has?
A. I couldn't remember the exact email to Frank, but we do have that email.
MR. MELUCCI: I can represent to the Court, Your Honor, I've never received an email looking to provide passwords.
A. Sorry, not to you.
BY MR. MELUCCI:
Q. The passwords you contend that are in these binders, would they de-encrypt the items that are identified in Exhibit 6 on the chart that was attached to the Government's omnibus response?
A. Would that be the -- is that the one that --
MR. MELUCCI: Which I have marked as Exhibit 6, Your Honor. If I may approach.
Q. So highlighted in orange, Mr. Aikens, are devices the Government represents it cannot de-encrypt. Do you have the passwords for those?
A. The passwords are only contained on the computer that was turned in. There's a logged-in password manager and then the papers in the folder or in the binder. And then there's a USB drive in there that contains a plain text, like not encrypted

version, and those would decrypt it, yes.
Q. So I'm a little confused. You said the passwords were contained in a binder that the agents seized during the search, right?
A. Correct.
Q. Are those passwords the passwords that access those encrypted devices?
A. I would just note for the record that on the fifth item down where it says, "The Government's unable to access all these hard drives," and says that they are encrypted, these are not actually all encrypted.
And then if you go down to the MacBook Pro -- there's two MacBook Pros -- the second MacBook Pro, older 2011, is not encrypted at all.
Q. So your suggestion is that certain devices that we contend were encrypted are not encrypted?
A. These would be irrelevant to what we mean, these right here.
THE COURT: When you say "these," you need to describe them.
BY MR. MELUCCI:
Q. You need to be specific.
A. USPIS items -- Line 0018 where it talks about all the other hard drives and the miscellaneous comments, those aren't the ones we're seeking entry to.

The ones that we would need are 0024, the two external hard drives, and it says, "Where found, Room MC, Inspector Gealey," and we would need the MacBook down at the bottom specifically.

Q. So you're saying on the MacBook. On a MacBook seized by the agents are the passwords to de-encrypt?

A. No.

Q. I'm not following.

A. They contain project files.

Q. We're not talking about project files. The Court wants to know, Seth, the passwords you contend will de-encrypt those devices that the Government contends it cannot de-encrypt are on the binder seized by the Government?

A. Or if they have that USB drive, correct, or --

Q. Which USB drive?

A. The USB drive, it's a black NVS [phonetic].

Q. Is it on that Exhibit 6?

A. No.

Q. No, it's not? It's not?

A. Well, they didn't list all of the USB drives. Like in the search warrant of photos, there's a book thing of -- it's in the record. It's with the computer on. There's a thing of USB drives, but they didn't take a picture of anything that's in the safe.

Q. Now, in November I met with Mr. Walker. We talked about

discovery, and I invited him -- you through him -- to come to the office, come to HSI, look at the encrypted devices. You could look at binders.

Did you ever tell Mr. Walker that you wanted to do that because you wanted to see the contents of those binders and could de-encrypt those devices?

A. Well, the computer that's turned on in the search warrant photos, the right one, the gaming computer, you guys had turned that over in discovery. So I --

Q. I'm not asking that, Seth. Just answer the question I ask you. Did you ever tell your attorney, Frank Walker, that you wanted to come to HSI offices and look at the contents of the devices seized by the agents during the search?

A. I just told him that it was impossible.

Q. Well, how do you know that?

A. Because we don't have the papers listing the passwords. No RAM dump was performed on the one in the house, and we --

Q. But you're saying that the passwords are contained in the binders. You can easily access the passwords from the binders, can't you, Seth?

A. If they're there, we could.

Q. Well, why wouldn't they be there? Are they handwritten? Are they typewritten?

A. They're printed.

Q. What color is the binder?

A. Silverish and gray.
Q. Did you ever tell Mr. Walker, "There's a silver binder that contains the passwords to de-encrypt the hardware, the devices"?
A. Well, it's always been noted that it had the papers.
Q. Where is it noted?
A. In the search warrant log that they had the papers listing passwords. I didn't have any other passwords anywhere else that were printed. They're all in the safe as we said.
Q. Why didn't you tell your attorney that you wanted to see the binder to look at the passwords so that you could look at this content which you believe contains useful information to your case?
A. My assumption was that based on the house -- the ones they shut down, they proclaim they couldn't get into -- they had gotten into the one on the right. So if they had done that, that's one of the papers listing passwords within that binder.
Q. Did you see the letters from Special Agent Coleman and the CSIPS Investigator Joseph Soeka?
A. Yeah.
Q. Do you agree with what they said?
A. I would disagree.
Q. Do you have more training than they do, Seth, in digital forensics?
A. No, but there's discrepancies with what they had said.

Q. I see. And the discrepancies being what?
A. So if they have the iPhone imaged, there's not a lot of case law around cracking an iPhone. There's only a certain amount of tools that can do it: GrayKey, Cellebrite, Checkm8 exploit, things of that nature.

So if they're able to get what's called the raw image, the DD image, the bin image, they could convert that to the EO1 format. EO1 stands for expert formats buying case I believe and then have turned that over versus providing whatever zip file that came from.

My assumption is wherever that zip file came from is an extraction from somewhere else just simply loaded into AXIOM.
Q. So you're contending that some of the finest forensic examiners in the nation can figure that out if you're saying it's that easy?
A. Meaning they could turn this over in an EO1 image?
Q. Yes.
A. For the iPhone, yeah.
Q. Do you want to look at the encrypted devices?
A. Unless you guys have the passwords, I don't -- we have an expert. There's just -- there's nothing we can do.
Q. Who's your expert?
A. Bit By Bit.
Q. Who's Bit By Bit?
A. I'm not sure of the gentleman's name.

Q. My question is "Do you want to see the contents of those encrypted devices, Seth?"
A. We would lead them for specific things that we listed in the record.
Q. That's not my question. My question is "Do you want to see the contents of those encrypted devices?"
A. Meaning do I want to have those?
Q. I think it's a fairly straightforward question.
A. Yes.
Q. It sounds like from your motion you're alleging that the devices have been ruined but contained evidence useful to you. Do you want to see the contents of those devices?
A. Yeah, in its unencrypted form.
Q. But they're encrypted evidence that the Government represents in its letters and its motions with the Court that we cannot access. Do you understand that?
A. Yes, but the papers listing passwords were always in the safe.
Q. Why did you encrypt those devices?
A. I always encrypt my stuff.
Q. What's on there that needs to be protected?
A. Nothing. Why wouldn't someone want to practice their own privacy?
Q. Is there evidence that you believe is helpful to your case on those devices?

A. We submitted it in the record.
Q. When we submit -- I don't understand that -- submitted in the record. What record?
A. We put -- in the Court's record, there's two pages where we state what files that were missing, and then I signed it at the end. And I sent it to Frank.
Q. I'm not sure I've ever seen that.
A. It's in the record.
Q. Can you describe generally to the Court what's on the contents of those encrypted devices that are in orange on Exhibit 6 attached to the Government's omnibus?
A. Can you repeat the question just one more time?
Q. Can you tell Judge Hardy, generally if you recall, what's contained in the contents of those encrypted devices?
A. Every single one?
Q. Yeah, if you can.
A. I can't remember every single file that I have, but I know that we submitted to the Court that Erin and Ryan's projects are specifically on that MacBook. Nonetheless, backups are made --
Q. Which MacBook is that?
A. The 2011 MacBook.
Q. Is that encrypted?
A. It shouldn't be encrypted. It's from 2011. That's premature for what's called "file vault," and that's Apple's

form of encryption.
Q. Anything else?
A. That's on there, yeah.
Q. Anything else on the devices?
A. Yeah, Scott Raybuck's website, original backup from Aaron Cadena, all the files related to the Bluetooth lighting system, all the files relating to Brute Cam's iOS app, Android app, the original backup from Heartbeat Keepsakes, all the order agreements from Avare Supply, the full text message record from Ryan Beichner.
Q. It would seem to me, if that was helpful to your case, you would want to see it and show it to the Court?
A. Understandably, yes, but it requires the encryption -- it requires the encryption key.
Q. Do you know what the encryption key is?
A. No, sir.
Q. Is it in the binder?
A. There's papers listing passwords. As we had noted, Agent Coleman said that they're all BitLocker. Okay. The ones that are in the safe in two external hard drives, those are not BitLocker.

So when I represented to the Court what AES-256 was, there should be eight specific -- and we had put that in our motion -- encrypted drives in there. So there should be eight separate passwords for those specifically, and then there's

other passwords that I had, too.
Q. But you would have to admit to Judge Hardy today that, as of May 2, 2025, you have never asked to see the contents or even attempt to look at the contents of those encrypted devices?
A. After Frank had met with you, he had sent me an email. This is the first thing I got. About a week later, he got me a copy of the files. He had to copy them to another drive. He gave me them. I reviewed them all.
And in January, I didn't specifically say, "File a motion." I had told him to immediately inform the U.S. Attorney's Office that that's not the amount of data I had and that something was wrong.
Q. We're talking about encrypted -- the encrypted stuff?
A. Correct, but that was only approximately the five terabytes there. We're missing that -- specifically the 18 terabytes is just the two external drives.
Q. The answer it sound to me like is no. You never asked to see the contents of those encrypted devices?
A. I wouldn't say that we haven't. In the beginning, Mike had explained he wanted to get a special master, but, I mean, you know, he was doing his own thing.
MR. MELUCCI: Your Honor, I don't know that I've got anything further to ask Mr. Aikens. Thank you.
THE COURT: Thank you.

Any redirect?

MR. WALKER: Yes.

REDIRECT EXAMINATION

BY MR. WALKER:

Q. Sir, is it your intent that, when you received the drive in January from the Government, you observed -- you reviewed the drive and noticed that there were files missing, and that's when you noticed that the Government was not able to or the Government was either not in receipt or did not review the drives that were missing?

Is that your statement today?

A. Correct, because when you open the AXIOM files, it specifically says USB drive, USB drive. That's not the two drives from the safe.

Q. Today, are you orally moving and requesting the Government turn over the MacBook from 2011, the decryption files from the silver notebook, and any and all files that they retrieved from your house?

A. Correct, with the addition of the iPhone X and the iPhone 8.

MR. WALKER: Thank you. No further questions.

THE COURT: You may step down.

Mr. Walker, do you have any other witnesses?

MR. WALKER: No, Your Honor.

THE COURT: Mr. Walker, just housekeeping.

Did you move for admission of Exhibit C?

MR. WALKER: That was an affidavit that an agent wrote that wouldn't be able to be admitted, Your Honor.

THE COURT: And then, Mr. Melucci, you made reference to Exhibit 6 which I think is already in the record. Okay.

MR. WALKER: Your Honor, I do have the two exhibits, A and B.

THE LAW CLERK: Are these marked? Can you mark these A and B?

MR. WALKER: I will.

THE LAW CLERK: Thanks.

THE COURT: Mr. Melucci, anything?

MR. MELUCCI: No witnesses, Your Honor.

THE COURT: With that all being said, here's what I'm going to do. I'm going to order the transcript of the hearing to be prepared within 30 days, costs to be shared by the parties.

I'm also going to issue a briefing schedule for the submission of post-findings of fact and conclusions of law. After briefing is completed, I'll take the matter under advisement and go from there.

MR. WALKER: Thank you, Your Honor.

THE COURT: Any questions or issues you would like to raise while we're all together?

MR. MELUCCI: If I may, Your Honor, just briefly.

At the end, Mr. Walker asked that, you know, orally motion to have the Government produce these certain devices. The Government's represented in its filings, Your Honor, repeatedly and in writing to Mr. Walker that all the Rule 16 discovery material that the Government recovered in its search or in this case has been either provided or been made available to the Defendant.

There is nothing further to produce. I maintain as I said in my motions and in the briefs, responsive briefs that the only thing that's not been exposed are the contents of these encrypted devices, and I think the Court sees in the letters that were attached to my responsive motions that these are simply not accessible and therefore not available to the United States.

They're available to the Defendant, and I represent that we never received a request to see the contents of those items. With respect -- and I appreciate what Mr. Walker is asking for, but with respect to producing anything further, there is nothing further to produce.

We still maintain and can make ourselves available at HSI offices for the opportunity for Mr. Walker and his client to come have the contents of these devices exposed through -- if he believes these passwords are contained in binders, look at the binders, read the contents of those devices in the presence of HSI forensic examiners.

THE COURT: Understood.

Mr. Walker, is it your client's contention that he didn't want to access those files in the presence of the Government? Is that what's holding this up?

MR. WALKER: Your Honor, I don't believe that is his contention. I believe just the timeline of receiving the information and knowing. I think from Mr. Aikens' position -- and I'm sure he'll correct me if I'm wrong -- when he received the initial discovery, there was nothing except a lot of paper discovery from the prior attorney and then the prior investigation.

Once I got on the case and received the drive after I met with Mr. Melucci, then it was discovered there's some information that is missing. We need that information. So I think at that point, just the timing of it, he was just requesting, "Hey, we need that information." Hence, this is why we had the motion.

I don't believe that it is -- I don't think it's prudent to review any of the information in the presence of a Government agent especially when you're the subject of an investigation or the Defendant of an indictment. So I would request, whether it's by Mr. Aikens or on his behalf, that he would not have to review that information in the presence of any agent.

THE COURT: Isn't he saying that the contents of

these things are exculpatory?

MR. WALKER: Yes, yes, Your Honor. To be fair, I want to clear up the record if there is any confusion. Mr. Melucci is correct. He has made that available to us from -- since he turned it over, Your Honor.

THE COURT: I recognize and appreciate the arguments you made thus far. I'm certainly going to take those things under advisement and do my analysis to make a decision.

Just stepping back 30,000 feet, just being pragmatic, doesn't it make sense that you all get in the room and figure out whether these files are accessible or not? You're saying you can't get into them. You're saying, "I can't get into them without these passwords that are contained in the silver binder that they have." The Government is inviting you to come down and have that conversation.

Wouldn't that confirm or make sense?

MR. WALKER: It would, Your Honor. I don't know if the Government has made clear -- forgive me. I could be wrong. I don't think they have made it clear that they have the actual binder that they turned over in the discovery to let us know "Yes, we have the binder, and we have the devices." Then it would be, "Oh, okay. Let's just go look at it." I don't think they have made clear that they have the binder.

THE COURT: From your perspective, if I'm

understanding the testimony correctly, you're saying the Government seized the binder. This binder contained typewritten passwords. All they had to do is type them in, and they had access to the file.

Is that your position?

MR. WALKER: I don't think it's that simple. I think it's a combination of a key code and the key codes that were on -- in the binder, Your Honor.

THE COURT: And is it your position that by not having -- your client's saying this stuff is destroyed or inaccessible.

Are you contending that that's a constitutional violation?

MR. WALKER: Yes, Your Honor.

THE COURT: Fourth Amendment in particular?

MR. WALKER: Yes, Your Honor, and also Fifth Amendment by due process, Your Honor.

THE COURT: I understand. I will take the matter under advisement after the transcript has been generated and you all have an opportunity in your subsequent submissions. I'm going to encourage you all in the mean time to keep talking.

MR. WALKER: Yes, Your Honor.

THE COURT: I think maybe accepting the Government's invitation to meet might actually kind of break through that

impasse, and if you ultimately choose not to do that, that is your prerogative. That may have consequences. I don't know. I would encourage that.

If you all think that bears fruit, certainly jointly let chambers know, and maybe this motion becomes moot. Maybe this motion takes on a different shape after you have had that conversation. I don't know, but my sense is that it can't hurt to try.

MR. WALKER: Yes, Your Honor.

THE COURT: Any other questions or concerns you want to raise?

MR. MELUCCI: Just follow-up with what Mr. Walker said. It's not possible to have Mr. Aikens look at the contents of those encrypted devices without the presence of HSI examiners because that is potentially incriminating evidence for the United States' case in chief, and we have a right to see that because they were lawfully obtained pursuant to a search warrant back in May of 2022.

So the request to have him look at those devices without the presence of HSI officers is not permissible.

THE COURT: Mr. Walker, you want to respond to that?

MR. WALKER: Your Honor, I understand the position. I will maybe research the issue and present any supporting case law on my position under separate cover.

THE COURT: Before you say that, let me just say this

before anybody files any paper on that particular issue. Why don't you confer with one another.

MR. WALKER: Yes, Your Honor.

(Defendant consults with Counsel.)

MR. WALKER: Your Honor, after review and speaking with Mr. Aikens, at the review of Defendant's Exhibit C, it states what he's testified on the record, that -- I have the number -- IS-0000634953 lists bulk storage media and papers listing passwords that was recovered by detective or Special Agent Coleman.

So it appears the Government has the binders. It's the question of whether or not they're able to use it to access any exhibits or further access any exhibits. I will confer with Mr. Melucci to see if they have it, have they tried it, and if so, what are the roadblocks there.

MR. MELUCCI: We have never had a request to look at any binders or passwords, but I've always -- and I represent again that it's been my practice for 20 years with any discovery that we have always made it available to the Defendant, and in this case that offer has been extended several times. And we're happy to have him come to HSI and look at these devices that we cannot see the contents of.

THE COURT: This strikes me as being quite analogous to the typical process of a child pornography quite frankly when we have material on the computer, and the Defendant needs

to go to a place and view it. Maybe there's differences here. You can tell me if there are. Okay.

Again, I'm going to ask for the transcript to be produced. You can do post-findings of fact and conclusions of law.

Mr. Walker, I do need to say that I'm really struggling, based upon the record before me, to get comfortable with reaching a conclusion, based upon what you've all presented, that you can affirmatively say that these materials have been destroyed. There's just no ability to access them it sounds like.

Your client needs to do something to establish that. I'm not saying he hasn't, but I'm struggling to get there. You're going to have to persuade me, and maybe things need to be done in order to do that.

MR. WALKER: Yes, Your Honor.

THE COURT: We're adjourned. Thank you all.

(Whereupon, the proceedings were adjourned at 10:18 a.m.)

C E R T I F I C A T E

I, AIMEE P. MARTIN, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled case.

\s\ Aimee P. Martin
Aimee P. Martin, RMR, CRR
Official Court Reporter

30th day of May, 2025
Date of Certification